

a prison program. The court finds that any disability in the claimant's access to the open labor market and TTD benefits occurred prior to his accident at the time of his conviction and incarceration. The court finds the claimant's status as a convicted felon precludes him from receiving TTD benefits under these circumstances.

The court further finds that since the claimant's physical needs are being met by the Hutchinson Correctional Facility, the claimant has no need for wage replacement in the traditional sense. The court finds that awarding of TTD benefits under these circumstances would result in a duplication of benefits, since the claimant's food, housing and medical benefits are already being met.¹

The claimant requests review of the ALJ's Order, arguing that the ALJ abused his discretion in denying temporary total disability benefits (TTD) for the stated reason since there is no exception to eligibility for TTD in the Act for employed prisoners. Claimant further argues this matter should be remanded to the ALJ for his failure to properly address all of the issues brought before him at the preliminary hearing on October 18, 2012.

Respondent argues that claimant's appeal should be dismissed and the order remain in full force and effect as the issues dealing with past medical treatment and TTD are not issues over which the Board takes jurisdiction on appeal from a preliminary hearing order.

FINDINGS OF FACT

This matter went to preliminary hearing on October 18, 2012. At that time, claimant raised several issues, including his right to TTD and the payment of outstanding medical bills which were marked as exhibits and attached to the preliminary hearing transcript. The Order, issued on November 13, 2012, found claimant's claim compensable, holding that claimant did not violate safety rules which would have resulted in a denial of benefits. The Order went on to authorize future medical treatment and psychiatric counseling, and ordered the reimbursement for certain prescriptions paid for by claimant. The Order was silent regarding claimant's request for TTD and the payment for past medical treatment. Claimant appealed and the Board remanded the Order to the ALJ to decide those issues presented at the preliminary hearing, but not yet determined.

On January 28, 2013, the ALJ issued a Remand Order stating claimant is not entitled to TTD because he is a prisoner and his needs are being met. Claimant appealed, arguing the ALJ abused his discretion by not conducting another preliminary hearing upon remand from the Board to determine the issues of the outstanding medical bills and TTD. Respondent contends the Board does not have jurisdiction over disputed issues dealing with claimant's entitlement to TTD and outstanding bills for past medical treatment.

¹ ALJ Order (Jan. 28, 2013).

This Board Member, in the Order of January 23, 2013, clearly discussed the issues dealing with both the TTD and past medical bills. The Order of the ALJ dated January 28, 2013, fails to mention the past medical bills.

PRINCIPLES OF LAW AND ANALYSIS

This Board Member incorporates into this Order the Principles of Law and Analysis from the Order of January 23, 2013, as if set forth herein. The initial discussion will address the ALJ's failure to mention the past due medical bill issue. The ALJ's failure to once again address all of the issues before him is both disturbing and frustrating for the Board and the parties. This matter will once again be remanded to the ALJ for a determination on the issue of the past medical bills. The earlier Order detailing the elements and requirements of due process remains applicable to this issue.

The dispute regarding claimant's request for TTD is not one over which the Board takes jurisdiction on an appeal from a preliminary hearing order.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.²

While this Board Member may not agree on the decision, the ALJ, nevertheless has the authority to rule on that issue at this stage of the proceedings. As noted in the previous Order of January 23, 2013, the Board does not generally take jurisdiction over a dispute involving TTD. As this issue has now been ruled upon, it is out of the Board's hands until such time as the matter returns as a final order from the ALJ.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2011 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

CONCLUSIONS

The Board does not have jurisdiction over the ALJ's denial of TTD benefits in this matter on an appeal of a preliminary order. Claimant's appeal on that issue is dismissed.

² *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, rev. denied 221 Kan. 757 (1977); *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).

³ K.S.A. 2011 Supp. 44-534a.

The failure of the ALJ to once again address the issue dealing with past medical benefits is “again” remanded to the ALJ for a decision, hopefully for the last time.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Remand Order of Administrative Law Judge Thomas Klein dated January 28, 2013, remains in full force and effect regarding the denial of TTD, but is remanded to the ALJ to allow him the opportunity to address the issue dealing with past medical expenses.

IT IS SO ORDERED.

Dated this _____ day of May, 2013.

HONORABLE GARY M. KORTE
BOARD MEMBER

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Thomas Klein, Administrative Law Judge